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7 Attorney for U.S. Bank National Association,
8 as Trustee, on behalf of the holders of
9 Adjustable Rate Mortgage Trust 2007-2
10 Adjustable Rate Mortgage-Backed Pass-
11 Through Certificates, Series 2007-2, and
12 its loan servicing agent, Select Portfolio
13 Servicing, Inc.

The Honorable Patricia C. Williams
Chapter 7
Response Date: January 14, 2011

10 **UNITED STATES BANKRUPTCY COURT FOR THE**
11 **EASTERN DISTRICT OF WASHINGTON**
12 **AT SPOKANE**

12 In re:

13 ANGELA UKPOMA,

14 Debtor.

NO. 10-06815

**MOTION FOR RELIEF FROM
STAY AND ABANDONMENT
OF REAL PROPERTY AND
DISTRICT COURT LAWSUIT**

18 Secured creditor U.S. Bank National Association, as Trustee, on behalf
19 of the Holders of Adjustable Rate Mortgage Trust 2007-2 Adjustable Rate
20 Mortgage-Backed Pass Through Certificates, Series 2007-2 (the "Trust"), and
21 its loan servicing agent, Select Portfolio Servicing, Inc. ("SPS"), move this
22 Court for an order terminating the automatic stay of 11 U.S.C. §362(a) so they
23 may commence and continue all acts necessary to enforce and foreclose the
24 Trust's security interest under its deed of trust on the Debtor's real property
25 located at 1123 Highway 395 North, Kettle Falls, Washington 99141. SPS
26

1 also seeks a comfort order for relief from stay for SPS to proceed with its
2 motion for dismissal and otherwise defend claims asserted in an unscheduled
3 pre-petition lawsuit, commenced by the Debtor a week before this Chapter 7
4 was filed, in the United States District Court for the Eastern District of
5 Washington, entitled *Ukpoma v. Select Portfolio Servicing, Inc.*, Case No. 10-
6 00420-LRS (the “District Court Lawsuit”). The Trust and SPS also request an
7 order directing the Chapter 7 Trustee to abandon the Real Property and the
8 District Court Lawsuit under 11 U.S.C. §554(a).

9 STATEMENT OF FACTS

10 The debtor, Angela Ukpoma (the “Debtor”) owns residential real
11 property located at 1123 Highway 395 North, Kettle Falls, Washington 99141,
12 and legally described as follows:

13 Parcel No. 1700800:

14 The W1/2 of the W1/2 of the W1/2 of the NW1/4 of
15 the SW1/4, lying Southwest of Primary State Highway
16 No. 3, in Section 13, Township 36 North, Range 37
East W.M., in Stevens County, Washington.

17 EXCEPT that portion conveyed to the State of
18 Washington for PSH No. 395 by Deed recorded
19 August 1, 1980, under Auditor’s File No. 498482.

20 Together with that portion of the NW1/4 of the SW1/4
21 of the SW1/4, lying Northerly of the centerline of
22 private easement road as shown and described in the
23 Mutual Easement recorded May 4, 1982, in Volume
24 71, page 1514, under Auditor’s File No. 516419, in
Section 13, Township 36 North, Range 37 East, W.M.,
in Stevens County, Washington.

25 EXCEPT commencing at the Northwest corner of the
26 SW1/4 of the SW1/4 of said Section 13; thence North

1 86°03' East along the North line of the said SW1/4 of
2 the SW1/4, 170.00 feet to the True Point of
3 Beginning; thence South 02°49' East 209.00 feet;
4 thence North 86°03' East 209.00 feet; thence North
5 02°49' West 209.00 feet; thence South 86°03' West
6 209.00 feet to the True Point of Beginning.

7 ALSO EXCEPT beginning at a point 379.00 feet East
8 of the Northwest corner of said NW1/4 of the SW1/4
9 of the SW1/4 of said Section 13; thence East 281.00
10 feet along the East line of said subdivision to the
11 Northeast corner thereof; thence South 660.00 feet
12 along the East line of said subdivision; thence West
13 660.00 feet along the South line of said subdivision;
14 thence North 451.00 feet along the West line of said
15 subdivision; thence East parallel with the South line of
16 said subdivision 379.00 feet; thence North parallel
17 with the East line of said subdivision 209.00 feet to
18 the Point of Beginning.

19 (the "Property"), subject to a note and deed of trust securing a lien on the
20 Property.

21 The Debtor's mortgage obligations arise under an Adjustable Rate Note
22 dated December 13, 2006, pursuant to which she agreed to pay \$252,000 plus
23 interest in installments of \$1,575 per month to her original lender, Credit
24 Suisse Financial Corporation (the "Original Lender"). See the supporting
25 Declaration of Diane Weinberger dated December 22, 2010, filed herewith
26 (the "Weinberger Declaration"), at Exhibit A. The Note was secured by a
Deed of Trust on the Property, which was duly recorded in Stevens County on
December 21, 2006, under Stevens County Auditor's File No. 2006 0015510.
Weinberger Declaration, Exhibit B.

1 All of the lender's right, title, and interest under the Note and Deed of
2 Trust are now owned by the Trust, pursuant to a March 17, 2008, Corporate
3 Assignment of Deed of Trust, which was duly recorded in Stevens County on
4 April 15, 2008, under Stevens County Auditor's File No. 2008 000259.
5 Weinberger Declaration, Exhibit C.

6 SPS is a loan servicer, and has serviced the Debtor's mortgage loan
7 since December 2006. The Debtor made monthly payments of \$1,575 until
8 September 2007, but has made no further payments since September 6, 2007.
9 Weinberger Declaration, ¶8.

10 Before this Chapter 7 case was filed, SPS initiated foreclosure
11 proceedings, and a trustee's sale was duly scheduled for December 3, 2010.
12 Weinberger Declaration, ¶9. The Debtor filed the District Court Lawsuit
13 against SPS on December 1, 2010. Weinberger Declaration, ¶10. On
14 December 8, 2010, the Debtor filed her petition for relief under Chapter 7.

15 This is not the first time the Debtor has used bankruptcy to forestall
16 foreclosure of the Property by the Trust. The Trust first commenced
17 foreclosure proceedings in 2008, and a trustee's sale was scheduled for June 6,
18 2008. On May 14, 2008, the Debtor filed a Chapter 7 petition in this Court
19 (Case No. 08-01899-PCW). The Trust filed a motion for relief from stay in
20 the previous Chapter 7, and this Court entered an Order terminating the
21 automatic stay and abandoning the Property from the estate on June 26, 2008.
22 That Chapter 7 case was then dismissed on August 1, 2008. The Debtor also
23 filed a Chapter 13 petition on July 18, 2008 (Case No. 08-02814-PCW). The
24 Chapter 13 was dismissed without plan confirmation on motion on October
25 21, 2008.

1 The Debtor has made no mortgage payments since before the last stay
2 relief order was entered in her previous Chapter 7. As before, she still has no
3 equity in the Property. SPS obtained a Broker's Price Opinion on the Property
4 dated June 9, 2010, with a value of \$212,500. Weinberger Declaration, ¶14.
5 As of December 27, 2010, the total secured loan payoff owed by the Debtor
6 was \$350,563.70. Weinberger Declaration ¶15. The Debtor's schedules, filed
7 on December 22, 2010, also show the lack of equity, listing the Property with
8 a value of \$250,000 and secured claims of \$610,862.88 against the Property.
9 *See* Schedule A.

10 Out of concern for avoiding a default order, SPS has proceeded to file a
11 responsive pleading in the District Court Action. A copy of SPS's Motion to
12 Dismiss is attached to the Weinberger Declaration as Exhibit I).

13 The Debtor did not list her claims in the District Court Lawsuit in her
14 bankruptcy schedules.

15 **LEGAL AUTHORITIES AND ARGUMENT**

16 **1. The Stay Should be Terminated as to the Property, and the** 17 **Property Should be Abandoned.**

18 Pursuant to 11 U.S.C. §362(d)(1), the Court shall grant relief from stay
19 "for cause, including the lack of adequate protection of an interest in property
20 of such party in interest[.]" Adequate protection in this case would require
21 normal and periodic cash payments, as called for by the Note, plus the
22 repayment of all delinquent amounts owed to the Trust, including all
23 attorneys' fees and costs incurred in filing this motion. The Debtor has failed
24 to make any of her monthly \$1,575 mortgage payments for 39 months. There
25 is no probability that the Debtor can provide adequate protection to the Trust.
26

1 Alternatively, the Court shall grant relief “with respect to a stay of an
2 act against property under subsection (a) of this section, if – (A) the debtor
3 does not have an equity in such property; and (B) such property is not
4 necessary to an effective reorganization[.]” 11 U.S.C. §362(d)(2). The
5 automatic stay should be terminated because the Debtor has no equity (as
6 confirmed in her bankruptcy schedules), and, since this is a Chapter 7
7 proceeding, there is no reorganization at issue.

8 Secured creditors with liens on any real property are also entitled to stay
9 relief if the court finds that the debtor filed for bankruptcy as part of a
10 “scheme to delay, hinder, and defraud creditors” that involves “multiple
11 bankruptcy filings affecting such real property.” §362(d)(4)(B). The Debtor’s
12 second round of filing for bankruptcy on the eve of foreclosure is just such a
13 scheme. This Court should terminate the stay pursuant to §362(d)(4).

14 The Property should also be abandoned because it is burdensome and of
15 inconsequential value and benefit to the estate, pursuant to 11 U.S.C. §554.

16 For each of these reasons, this Court should terminate the automatic
17 stay and abandon the Property as an asset of the estate, to allow the Trust and
18 SPS to proceed with foreclosure of the Deed of Trust on the Property.

19 **2. The Stay Should be Terminated as to the District Court**
20 **Lawsuit, and the Debtor’s Claims Should be Abandoned.**

21 The filing of a petition in bankruptcy creates an estate that generally
22 includes “all legal or equitable interests of the debtor in property as of the
23 commencement of the case.” 11 U.S.C. §541(a)(1). Any causes of action that
24 accrue to the debtor prior to filing the bankruptcy petition are property
25 interests included in the estate. *Integrated Solutions, Inc. v. Service Support*
26

1 *Specialties, Inc.*, 124 F.3d 487, 491 (3d Cir.1997); *Cain v. Hyatt*, 101 B.R.
2 440, 441-42 (E.D.Pa.1989); *Miller v. Shallowford Community Hospital, Inc.*,
3 767 F.2d 1556 (11th Cir. 1985) (“property of the estate” generally includes
4 causes of action); *In re Shore Air Conditioning*, 18 B.R. 643 (Bankr. D.N.J.
5 1982). After a claim becomes property of the estate, only the bankruptcy
6 trustee, as representative of the estate, has the authority to prosecute or settle
7 the cause of action. *Chrysler Credit Corp. v. B.J.M., Jr., Inc.*, 834 F. Supp.
8 813, 839 (E.D.Pa.1993); *Cain*, 101 B.R. at 442. *See Sender v. Simon*, 84 F.3d
9 1299, 1305 (10th Cir.1996) (holding that a bankruptcy estate includes “causes
10 of action belonging to the debtor at the commencement of the bankruptcy
11 case”); *Wieburg v. GTE Sw. Inc.*, 272 F.3d 302, 305-308 (holding that the
12 trustee is the real party in interest and has exclusive standing to assert pre-
13 petition claims).

14 There can be no dispute that the Debtor’s claims asserted in the District
15 Court Action accrued before her bankruptcy petition was filed. Once the
16 Debtor commenced her bankruptcy case, her claims in the already-pending
17 District Court Lawsuit became the property of her bankruptcy estate.

18 SPS needs to defend its rights in the District Court Lawsuit, which was
19 filed on December 1, 2010, and accordingly filed a motion to dismiss as a
20 responsive pleading to the Debtor’s Complaint. SPS seeks a comfort order
21 lifting the stay, though technically it is not a violation of the automatic stay to
22 defend a pre-petition lawsuit filed by the Debtor. *See In re Way*, 229 B.R. 11
23 (B.A.P. 9th Cir. 1998); *White v. City of Santee (In re White)*, 186 B.R. 700
24 (B.A.P. 9th Cir. 1995). This Court should terminate the automatic stay as to
25 the District Court Lawsuit, and enter an order abandoning the claims asserted
26

1 by the Debtor in the District Court Action, so there can be no questioning
2 SPS's ability to proceed to seek an order of dismissal or otherwise defend its
3 legal rights in the District Court Lawsuit.

4 **CONCLUSION**

5 This court should enter an order abandoning and terminating the
6 automatic stay as to both the Property and the District Court Lawsuit.

7 The undersigned further requests that the 14 day stay on the effective
8 date of orders for stay relief, as provided in Rule 4001(a)(3), be waived.

9 A proposed Order is attached as Exhibit 1.

10 DATED this 27th day of December, 2010.

12 /s/ Mark A. Bailey

13 Mark A. Bailey, WSBA No. 26337

14 BERESFORD BOOTH PLLC

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17 *Attorney U.S. Bank National*
18 *Association, as Trustee, on behalf of*
19 *the holders of Adjustable Rate*
20 *Mortgage Trust 2007-2 Adjustable*
21 *Rate Mortgage-Backed Pass-Through*
22 *Certificates, Series 2007-2, and its*
23 *loan servicing agent, Select Portfolio*
24 *Servicing, Inc.*

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DATED this 27th day of December, 2010, at Edmonds, Washington.

/s/ Mark A. Bailey
Mark A. Bailey
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Edmonds, WA 98020
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the holders of Adjustable Rate
Mortgage Trust 2007-2 Adjustable
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EXHIBIT 1

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The Honorable Patricia C. Williams
Chapter 7

10 **UNITED STATES BANKRUPTCY COURT FOR THE**
11 **EASTERN DISTRICT OF WASHINGTON**
12 **AT SPOKANE**

12 In re:

13 ANGELA UKPOMA,

14 Debtor.

NO. 10-06815

[PROPOSED]

**ORDER GRANTING RELIEF
FROM STAY AND
ABANDONMENT OF REAL
PROPERTY AND DISTRICT
COURT LAWSUIT**

20 This matter came before the Court on the Motion for Relief from Stay
21 and Abandonment of Real Property and District Court Lawsuit, filed on
22 December 27, 2010 (the "Motion"), by secured creditor U.S. Bank National
23 Association, as Trustee, on behalf of the Holders of Adjustable Rate Mortgage
24 Trust 2007-2 Adjustable Rate Mortgage-Backed Pass Through Certificates,
25 Series 2007-2 (the "Trust"), and its loan servicing agent, Select Portfolio
26

ORDER - 1

BERESFORD ♦ BOOTH PLLC
145 THIRD AVENUE SOUTH, SUITE 200
EDMONDS, WASHINGTON 98020
(425) 776-4100 • (425) 776-1700 fax

1 Servicing, Inc. (“SPS”). Based upon the Motion, and upon consideration of
2 the pleadings, papers and evidence presented, the Court finds that termination
3 of the automatic stay is appropriate for cause, including the lack of adequate
4 protection of the Trust’s interest in the below-described real property, because
5 the Debtor does not have equity in the real property, which is not necessary to
6 an effective reorganization, and because the filing of this Chapter 7 was part of
7 a scheme to delay, hinder, and defraud creditors that involves multiple
8 bankruptcy filings affecting such real property. NOW, THEREFORE, IT IS
9 HEREBY

10 **ORDERED** that the Motion is GRANTED; and it is further

11 **ORDERED** that, pursuant to 11 U.S.C. §§362(d)(1), (2) and (4)(B), the
12 automatic stay is terminated as to the Debtor’s real property located at 1123
13 Highway 395 North, Kettle Falls, Washington 99141, legally described as
14 follows:

15 Parcel No. 1700800:

16 The W1/2 of the W1/2 of the W1/2 of the NW1/4 of
17 the SW1/4, lying Southwest of Primary State Highway
18 No. 3, in Section 13, Township 36 North, Range 37
East W.M., in Stevens County, Washington.

19 EXCEPT that portion conveyed to the State of
20 Washington for PSH No. 395 by Deed recorded
21 August 1, 1980, under Auditor’s File No. 498482.

22 Together with that portion of the NW1/4 of the SW1/4
23 of the SW1/4, lying Northerly of the centerline of
24 private easement road as shown and described in the
25 Mutual Easement recorded May 4, 1982, in Volume
26 71, page 1514, under Auditor’s File No. 516419, in
Section 13, Township 36 North, Range 37 East, W.M.,
in Stevens County, Washington.

1 EXCEPT commencing at the Northwest corner of the
2 SW1/4 of the SW1/4 of said Section 13; thence North
3 86°03' East along the North line of the said SW1/4 of
4 the SW1/4, 170.00 feet to the True Point of
5 Beginning; thence South 02°49' East 209.00 feet;
6 thence North 86°03' East 209.00 feet; thence North
7 02°49' West 209.00 feet; thence South 86°03' West
8 209.00 feet to the True Point of Beginning.

9 ALSO EXCEPT beginning at a point 379.00 feet East
10 of the Northwest corner of said NW1/4 of the SW1/4
11 of the SW1/4 of said Section 13; thence East 281.00
12 feet along the East line of said subdivision to the
13 Northeast corner thereof; thence South 660.00 feet
14 along the East line of said subdivision; thence West
15 660.00 feet along the South line of said subdivision;
16 thence North 451.00 feet along the West line of said
17 subdivision; thence East parallel with the South line of
18 said subdivision 379.00 feet; thence North parallel
19 with the East line of said subdivision 209.00 feet to
20 the Point of Beginning.

21 (the "Property"); and it is further

22 **ORDERED** that the automatic stay is also terminated as to the Debtor's
23 claims asserted in an unscheduled pre-petition lawsuit, commenced by the
24 Debtor a week before this Chapter 7 was filed, in the United States District
25 Court for the Eastern District of Washington, entitled *Ukpoma v. Select*
26 *Portfolio Servicing, Inc.*, Case No. 10-00420-LRS (the "District Court
Lawsuit"); and it is further

ORDERED that the Property and the District Court lawsuit is hereby
abandoned from the estate; and it is further

ORDERED that the 14-day stay under Fed. R. Bankr. P. 4001(a)(3) is
waived.

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So ordered this _____ day of _____, 2011.

Honorable Patricia C. Williams
United States Bankruptcy Judge

Presented by:

/s/ Mark Bailey
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